6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R03-OAR-2011-0680; FRL-9625-4]

Determination of Failure to Attain by 2005 and Determination of Current Attainment of the 1-Hour Ozone National Ambient Air Quality Standards in the Baltimore Nonattainment Area in Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to determine that the Baltimore severe 1-hour ozone nonattainment area failed to attain the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by the applicable attainment date of November 15, 2005, based on three years of complete, quality-assured and certified ambient air quality monitoring data for 2003 through 2005. In addition, EPA is proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS. This proposed determination is based upon the most recent three years, 2008-2010, of complete, quality-assured and certified ambient air monitoring data showing the area has monitored attainment of the 1-hour ozone NAAQS. EPA's review shows that the area has attained the 1-hour ozone NAAQS since the 2006-2008 monitoring period and that it continues to attain the 1-hour ozone NAAQS. If this latter proposed determination is made final, the requirement for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore severe 1-hour ozone nonattainment area shall be suspended.

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2011-0680** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: fernandez.cristina@epa.gov

C. Mail: EPA-R03-OAR-2011-0680, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2011-0680**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA

cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814-2179, or by e-mail at cripps.christopher@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,” and “our” refer to EPA.

The information presented in this notice is organized as follows:

I. What Action is EPA Proposing?

EPA is proposing two separate and independent determinations for the Baltimore 1-hour severe ozone nonattainment area (hereafter "the Baltimore area").

A. Proposed Determination of Failure to Attain by Applicable Attainment Date

For the Baltimore area, EPA is proposing to determine that the area did not attain the 1-hour ozone NAAQS by the applicable attainment date, November 15, 2005. This proposed determination is based upon complete, quality-assured and certified air quality monitoring data for the 2003 through 2005 ozone seasons.

B. Proposed Determination of Current Attainment

EPA is also proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS, based upon complete, quality-assured and certified ambient air monitoring data showing the area has monitored attainment of the 1-hour ozone NAAQS for the most recent 3-year period 2008-2010. Preliminary data available for 2011 indicate that the Baltimore area continues to attain the standard. EPA's review shows that the area has monitored attainment continuously since the 2006-2008 monitoring period. If this proposed determination is made final, the requirement for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore area shall be suspended.

II. What is the Background for these Proposed Actions?

A. What are the Geographical Boundaries of the Baltimore Area?

The Baltimore area consists of Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties

and the City of Baltimore in Maryland.

B. What is the History of the Ozone Designations and Classifications and the 1-Hour Ozone Requirements for the Baltimore Area?

Pursuant to provisions of the Clean Air Act (CAA), EPA establishes NAAQS for certain widespread pollutants that cause or contribute to air pollution that is reasonably anticipated to endanger public health or welfare (sections 108 and 109 of the CAA). In 1979, we promulgated the 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, we may informally report ozone concentrations in parts per billion (ppb) where one-thousand ppb equals one ppm. Thus, 0.12 ppm becomes 120 ppb or up to 124 ppb when rounding is considered. (Rounding is further discussed in section IV. B. of this document.)

EPA first designated the Baltimore area as an ozone nonattainment area in 1978. See, 43 FR 8962 at 9001, March 3, 1978.[1] Under the 1990 Amendments to the CAA, the CAA designated "by operation of law" as nonattainment each area of the country that was already designated nonattainment for the 1-hour ozone NAAQS. The Baltimore area was one such pre-amendment ozone nonattainment area so designated nonattainment for ozone. The CAA as amended in 1990 further classified "by operation of law" each ozone nonattainment area as marginal, moderate, serious, severe, or extreme depending on the severity of the area's air quality problem. See, CAA sections 107(d)(1)(C) and 181(a).

[1] This action designated the Metropolitan Baltimore Intrastate Air Quality Control Region (see, 40 CFR 81.28), which has the same boundaries as the Baltimore 1-hour ozone nonattainment area, as nonattainment for

The control requirements and date by which attainment is to be achieved vary with an area's classification. Marginal areas are subject to the fewest mandated control requirements and had the earliest attainment date, November 15, 1993, while severe and extreme areas are subject to more stringent planning requirements and are provided more time to attain the standard. Based upon air quality monitoring data, the Baltimore area was classified as "severe-15" with a statutory attainment date of November 15, 2005. See, 56 FR 56694, November 6, 1991.

C. What is the Background of 1-Hour Ozone Anti-Backsliding Requirements in the Transition to the 1997 8-Hour Ozone Rule?

On July 18, 1997 (62 FR 38856), EPA promulgated a new, more protective standard for ozone based on an 8-hour average concentration (the "1997 8-hour ozone NAAQS"). In an April 30, 2004 final rule (69 FR 23858), EPA designated and classified most areas of the country under the 1997 8-hour ozone NAAQS promulgated in 40 CFR 50.10. We designated the Baltimore area as nonattainment for the 1997 8-hour ozone NAAQS. This 8-hour ozone nonattainment area is composed of the same five counties and city as the 1-hour ozone nonattainment area. We classified this area as moderate under the 1997 8-hour ozone NAAQS. At the time of designation, the same area remained in nonattainment for the 1-hour standard.

On April 30, 2004 (69 FR 23951), EPA issued a final rule entitled "Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard — Phase 1" (the "Phase 1 Implementation Rule"). Among other actions, this rule revoked the 1-hour ozone NAAQS in the

---

"photochemical oxidants." The term "photochemical oxidants" was replaced by "ozone" in a February 8, 1979 final rule (44 FR 8202 at 8220).

Baltimore area (as well as in most other areas of the country), effective June 15, 2005. See, 40 CFR 50.9(b); 69 FR 23951 at 23996, April 30, 2004; and 70 FR 44470, August 3, 2005.

Although EPA revoked the 1-hour ozone standard, 8-hour ozone nonattainment areas remain subject to certain 1-hour anti-backsliding requirements based on their 1-hour ozone classification. Initially, in our rules to address the transition from the 1-hour to the 8-hour ozone standard, EPA did not include contingency measures or the section 185 fee program among the measures retained as 1-hour ozone anti-backsliding requirements.[2] However, on December 23, 2006, the United States Court of Appeals for the District of Columbia Circuit determined that EPA should not have excluded these requirements from its anti-backsliding requirements. See, South Coast Air Quality Management District v. EPA (SCAQMD v. EPA), 472 F.3d 882 (D.C. Cir. 2006) rehearing denied 489 F.3d 1245 (clarifying that the vacatur was limited to the issues on which the court granted the petitions for review).

Thus, the Court vacated the provisions that excluded these requirements. As a result, states must continue to meet the obligations for 1-hour ozone NAAQS contingency measures and, for severe and extreme areas, major source fee programs. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e), and that addresses contingency measures for failure to attain or make reasonable further progress toward attainment of the 1-hour standard. See, 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period).

---

[2] Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard--Phase 1, 69 FR 23951 (April 30, 2004).

III. What is the Rationale for and Effect of these Proposed Determinations for the Baltimore Area?

A. What is the Rationale for the Proposed Determination of Failure to Attain by Applicable Attainment Date?

After revocation of the 1-hour ozone standard, EPA must continue to provide a mechanism to give effect to the 1-hour anti-backsliding requirements. See, SCAQMD v. EPA, 47 F.3d 882, at 903. In keeping with this responsibility with respect to 1-hour anti-backsliding contingency measures and section 185 fee programs, EPA proposes to determine that the Baltimore area failed to attain the 1-hour ozone standard by its applicable attainment date. Consistent with 40 CFR 51.905(e)(2) and the South Coast court decision, upon revocation of the 1-hour ozone NAAQS for an area, EPA is no longer obligated to determine whether an area has attained the 1-hour NAAQS by its applicable deadline, except insofar as it relates to effectuating the anti-backsliding requirements that are specifically retained. EPA's proposed determination here – that the area did not attain the 1-hour ozone standard by the November 15, 2005 deadline (based on data for 2003-2005) is linked solely to two required 1-hour ozone anti-backsliding measures: i.e., 1-hour contingency measures for failure to attain under section 172(c)(9) and fee programs under sections 182(d)(3), 182(f) and 185.

A final determination of failure to attain by the area's 2005 1-hour ozone attainment date will not result in reclassification of the area under the revoked 1-hour standard. As a severe 1-hour ozone nonattainment area, the Baltimore area is not subject to reclassification for the 1-hour ozone standard, and in any event EPA is no longer required to reclassify any area to a higher

classification for the 1-hour ozone NAAQS based upon a determination that the area failed to attain that NAAQS by its attainment date. See, 40 CFR 51.905(e)(2)(i)(B).

EPA's proposed determination that the area failed to attain the 1-hour ozone standard by its applicable date, if finalized, would bear on the area's obligations with respect to two 1-hour ozone anti-backsliding requirements whose implementation would be triggered by a finding of failure to attain by the applicable attainment date: section 172(c)(9) contingency measures for failure to attain and sections 182(d)(3) ad 185 major stationary source fee programs.

B. What is the Status of the Maryland State Implementation Plan (SIP) Regarding the 1-Hour Ozone Anti-Backsliding Requirement for Contingency Measures?

With respect to the 1-hour ozone anti-backsliding requirement for contingency measures, EPA has previously approved the State of Maryland's 1-hour ozone attainment demonstration, reasonably available control measures and reasonable further progress (RFP)[3] plans, and RFP/ROP contingency measures for Baltimore. See, 66 FR 49108, September 26, 2001, 66 FR 54666, Oct. 30, 2001; 68 FR 61103, October 27, 2003; 69 FR 7133, February 13, 2004); 64 FR 70397, December 16, 1999; 68 FR 40861, July 9, 2003; 65 FR 4638, July 28, 2000; 66 FR 36964, July 16, 2001; and September 7, 2001, 66 FR 44760, September 7, 2001.

While EPA did not approve contingency measures for failure to attain the 1-hour ozone NAAQS in the Baltimore area, EPA has reviewed reductions that resulted from measures that were not relied upon in the attainment demonstration, and believes that these measures provided more

reductions than necessary to serve the purpose of contingency measures for this area.

Contingency measures for failure to attain aim to provide for a 3 percent reduction in emissions. The amount of reductions required is computed from the same baseline as is used for computing reductions needed for RFP/ROP for the attainment year. In the case of the Baltimore area, 3 percent of the ROP baselines for the 2005 attainment year equates to 8.23 tons per day (TPD) of volatile organic compounds (VOC) or 13.77 TPD of nitrogen oxides (NOx).

An RFP/ROP plan includes a target level of emissions needed to meet the RFP requirement and a demonstration that the projected levels of emissions in the area by the RFP deadline date will be equal to or less than the target level after accounting for growth. See, 57 FR 13498 at 13507-13508, April 16, 1992.[4] As a severe 1-hour ozone nonattainment area the ROP plan included target levels of VOC and NOx emissions for November 15, 2005, which was the Baltimore area's attainment date for the 1-hour ozone NAAQS. As a moderate 1997 8-hour ozone nonattainment area, the RFP plan for the Baltimore area included target levels of VOC and NOx emissions for December 31, 2008. EPA has approved the ROP/RFP plans for 2005 and 2008; see, 69 FR 7133, February 13, 2004 and 75 FR 31709, June 4, 2010, respectively. These plans contain projected levels of actual emissions for November 15, 2005 and for December 31, 2008. The RFP/ROP plan for 2005 and for 2008 each uses consistent methods for projecting growth in emissions-related activities after the baseline years and most importantly use the same emissions factor model, MOBILE6, for developing emissions factors for on-road or highway mobiles

[3] For the 1-hour ozone NAAQS, RFP was termed "rate-of-progress (ROP)."

sources. Comparison of the 2005 and 2008 projected levels of actual emissions suggests that the Maryland SIP provided for reduction in total emissions of 2.05 TPD of VOC and 66.97 TPD of NOx emissions after 2005 but by December 31, 2008. As noted above, the contingency measure requirement for failure to attain for the Baltimore area under the 1-hour ozone NAAQS was 8.23 TPD of VOC or 13.77 TPD of NOx. For further details of the ROP/RFP plans for the Baltimore area and the derivation of the projected reductions between 2005 and 2008 refer to the technical support document prepared for this proposed action.

Based upon the air quality monitoring data for 2006 and later years (discussed in section V.B of this document), EPA can conclude that the Maryland SIP provided for sufficient emission reductions after November 15, 2005 to attain the 1-hour ozone NAAQS, as evidenced by attainment of the 1-hour ozone standard by 2008 and continued attainment thereafter.

C. What Would be the Effects of these Proposed Determinations for the Baltimore Area?

As noted above, EPA is also proposing a separate and independent 1-hour ozone determination that the Baltimore area currently attains the 1-hour ozone standard, based on complete, quality-assured and certified ozone data for 2008-2010, and preliminary data available for 2011.[5] If this determination is finalized, then even if EPA finalizes its proposed determination that the area failed to attain the 1-hour ozone standard by the 2005 deadline, it will not result in any 1-hour ozone contingency measure obligations for the area. Under EPA's "Clean Data Policy"

---

[4] For specifics relating to the RFP/ROP plans for the Baltimore area, for example, see the following notices of proposed rulemaking: 75 FR 958, January 7, 2010, and 68 FR 75191, December 30, 2003

[5] As noted elsewhere in this proposed determination, the monitoring data show that the Baltimore area has been attaining the 1-hour ozone standard continuously since 2008.

interpretation,[6] which was articulated first for the 1-hour standard and later codified for the 8-hour ozone standard (40 CFR 51.918), a determination of attainment suspends obligations to make submissions for attainment-related requirements (including contingency measures) for that standard.[7] See, for example, determination of 1-hour ozone attainment for Baton Rouge, 75 FR 6570, February 10, 2010.

With respect to the 1-hour ozone anti-backsliding requirement for penalty fees, section 182(d)(3) requires SIPs to include provisions required by section 185. Section 185 requires 1-hour ozone SIPs for severe areas to provide that, if the area has failed to attain by the attainment date, each major stationary source of ozone precursors located in the area must begin paying a fee to the state. Thus a final determination of failure to attain by the area's 1-hour attainment date would trigger the 1-hour anti-backsliding obligation to implement the penalty fee program under section 182(d)(3) 182(f) and 185, unless that obligation is terminated.

IV. How Does EPA Compute Whether an Area Complies with the 1-Hour Ozone NAAQS?

A. What is the Level and Form of the 1-Hour Ozone NAAQS?

The relevant regulation, 40 CFR 50.9(a), states the following regarding the 1-hour ozone NAAQS:

1. The level of the national 1-hour primary and secondary NAAQS for ozone is 0.12 parts per million; and,

---

[6] See, "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," (Clean Data Policy) dated May 10, 1995.

[7] The U.S. Court of Appeals for the District of Columbia Circuit upheld the provisions of 40 CFR 51.918, which codified the Clean Data Policy. Previously Courts of Appeals for several other Circuits upheld the Clean Data Policy under the 1-hour standard. See, NRDC v. EPA, 571 F.3d 1245 (DC Cir. 2009); Sierra Club v. EPA, 99 F. 3d

2. The 1-hour ozone NAAQS "is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 parts per million is equal to or less than 1, as determined by appendix H" to 40 CFR part 50.

We consider that a monitor exceeds the 1-hour ozone standard when that ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm at least once in any given calendar day. Only the maximum 1-hour ozone concentration at the monitor during any calendar day is considered when determining if the 1-hour ozone NAAQS was exceeded on that day. That is, even when a monitor records more than one hourly concentration above 0.12 ppm during a calendar day, that day counts as only a single "exceedance day." See, 40 CFR 50.9 "National 1-hour primary and secondary ambient air quality standards for ozone" and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR part 50, appendix H).

B. What are the Relevant Data Handling and Rounding Conventions for the 1-Hour Ozone NAAQS?

Although the 1-hour ozone NAAQS as promulgated in 40 CFR 50.9 does not address specific data handling conventions, EPA's publicly articulated position and the approach that the air quality management community has long universally adopted, is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of

---

1551 (10th Cir.1996); Sierra Club v. EPA, 375 F.3d 537(7th Cir. 2004) and Our Children's Earth Foundation v. EPA, No. 04–73032 (9thCir. June 28, 2005) (memorandum opinion).

the standard, which is 0.12 ppm.

As early as 1979, EPA's guidance noted that the level as it is expressed in the standard defines the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (0.005 rounds up), and, therefore, 0.125 ppm is the smallest concentration value in excess of the level of the standard. See, "Guideline for the Interpretation of Ozone Air Quality Standards," EPA-450/4-79-003, OAQPS No. 1.2-108, January 1979. EPA has consistently applied the rounding convention in this 1979 guideline. See, 68 FR 19106 at 19111, April 17, 2003; 68 FR 62041 at 62043, October 31, 2003; and 69 FR 21717 at 21719, April 22, 2004. In the 1990 CAA Amendments, Congress expressly recognized the continuing validity of EPA guidance in the 1990 CAA Amendments. See, generally, H Comm. Rep. 101-490 pp. 197, 232 (1990) (House Energy and Commerce Committee Report).

C. How is the Number of Expected Exceedance Days Determined and How is Attainment Determined Under the Form of the 1-Hour Ozone NAAQS?

A nonattainment area attains the 1-hour ozone NAAQS only when all monitors in that area attain the 1-hour ozone NAAQS. EPA determines if an area has attained the 1-hour ozone NAAQS by calculating, at each monitor, the average expected number of days over the standard per year (i.e., "average number of expected exceedance days") during the applicable 3-year period. See, generally the General Preamble, 57 FR 13498 at 13506, April 16, 1992 and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone

Nonattainment Areas," February 3, 1994.

A monitor shows attainment when the average number of "expected" number of "exceedance days" per calendar year "is less than or equal to one (1)" when averaged over a 3-year period. See, 40 CFR part 50 appendix H and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," dated February 3, 1994. The level of the standard defines the number of significant figures to be used in comparisons with the standard, and, in this case, the number of significant figures to be used is one. The smallest value which will exceed the value of this standard is a value of 1.1, and, the average over a 3-year period is therefore rounded to one significant figure.

An observed daily maximum value at a monitor is considered to be valid if 75 percent of the hours from 9:01 a.m. to 9:00 p.m. were measured or if the highest hourly value measured is greater than the level of the standard. Where there are either no data for a day or data for less than the 75 percent of the hours between 9 a.m. and 9 p.m., a missing daily maximum ozone value may be assumed to be less than the level of the standard if the valid daily maxima on both the preceding day and the following day do not exceed 75 percent of the level of the standard. A day for which the daily maximum ozone value may be assumed to be less than 0.0125 ppm is termed "day assumed less than the standard." See, appendix H to 40 CFR part 50.

To account for missing data, the procedures in appendix H to 40 CFR part 50 are used to adjust the actual number of observed exceedances of the standard in a year to yield the annual number

of “expected exceedance days” at an air quality monitoring site.

The computation of “expected exceedance days” is rounded to one significant figure for both the purposes of estimating the annual number of expected exceedance days at a monitor and for the annual average number of expected exceedance days over a 3-year period.

For example, for the 3-year average, any value less than 1.05 rounds down to 1.0, and, any value of 1.05 or greater rounds up to 1.1. As stated in a preceding paragraph in this section of this document a violation occurs when the average number of expected exceedance days over a consecutive 3-year period is greater than or equal to 1.1. Therefore, to not violate the 1-hour ozone NAAQS, the maximum aggregate sum of expected exceedance days over a consecutive 3-year period allowed is 3.1 because 3.1 divided by 3 is 1.03333, which when rounded to one significant figure is 1.0 which does not exceed 1. An aggregate sum of 3.2 expected exceedance days over a consecutive 3-year period do not meet this standard because 3.2 divided by 3 equals 1.0666, which when rounded to one significant figure is 1.1 and which is greater than 1.0. For further details refer to the technical support document prepared for this proposed action regarding the conversion of observed daily maximum values to expected exceedance days for each monitoring site.

A determination of whether an area's air quality meets the 1-hour ozone standard is based upon three years of complete, quality-assured and certified air quality monitoring data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA's Air Quality System (AQS) database. Data from air monitors operated by

state/local agencies in compliance with EPA monitoring requirements must be submitted to the AQS database. Monitoring agencies must annually certify that these data are accurate to the best of their knowledge, and, for calendar years 2010 and later, such certifications must be submitted by May 1st for the prior year's data. See, 40 CFR 58.15. Thus, the certification of the air quality monitoring data for calendar year 2011 is due no later than May 1, 2012. Accordingly, EPA relies primarily on data in its AQS database when determining the attainment status of an area. See, 40 CFR 50.9; 40 CFR part 50, appendix H; 40 CFR part 53; 40 CFR part 58, appendices A, C, D, and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix H.

V. What is EPA's Analysis of the Data Regarding Baltimore's Attainment of the 1-Hour Ozone Standard?

As noted previously, the applicable attainment date under the 1-hour ozone NAAQS for the Baltimore area was November 15, 2005.[8] We base a determination regarding attainment of the 1-hour ozone NAAQS by this deadline on the average number of expected exceedance days per year for the period 2003-2005.

From 2003 through 2005, ambient air quality for ozone was monitored on a continuous basis at six monitoring sites within the Baltimore area. The minimum required monitoring season for the Baltimore area is 214 days from April 1st to October 31st of every year. See, 40 CFR 58.11(c)

[8] Pursuant to section 181(a)(5) of the CAA, the state may request, and EPA may grant up to two 1-year attainment date extensions, provided that certain criteria are met. One criterion is that there be no more than one exceedance of the 1-year ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required. As shown in Table 1, the Edgewood, Harford County monitoring site recorded two (2) exceedances in

and Table D-3 "Ozone Monitoring Seasons by State" in appendix D to 40 CFR part 58.

A. What is EPA's Analysis of Whether the Baltimore Area Attained the 1-Hour Ozone Standard by its 2005 Attainment Deadline?

During the entire 2003 to 2005 period, six ozone monitoring stations in the Baltimore area were in operation. Table 1 summarizes the ozone data collected at these six ozone monitoring stations during the 2003 to 2005 period and included in AQS for the Baltimore area. These data are complete and have been quality-assured and recorded in AQS. Maryland uses the AQS as the permanent database to maintain its data and quality assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

Table 1. Number and Average Number of Ozone Expected Exceedance Days and Design values per Year by Monitor in the Baltimore area 2003 to 2005

Monitor Information	**Annual Number of Expected Exceedance Days**			**Average Number of Expected Exceedance Days Per Year**
Monitor (AQS ID No.)	**2003**	**2004**	**2005**	**2003-05**
Davidsonville Recreation Center, 3801 Queen Anne Bridge Road, Anne Arundel County (24-003-0014)	2.1	0.0	0.0	0.7
Padonia Elementary School, 9834 Greenside Drive, Cockeysville, Baltimore County (24-005-1007)	0.0	0.0	0.0	0.0
600 Dorsey Avenue, Essex, Baltimore County (24-005-3001)	1.0	0.0	1.0	0.7
1300 W. Old Liberty Road,	0.0	0.0	0.0	0.0

2005, during the year of the attainment deadline. Therefore the Baltimore area was not eligible for an attainment date extension under section 181(a)(5) nor did the State request such an extension.

Carroll County (24-013-0001)				
Edgewood Chemical Biological Center (APG), Waehli Road, Edgewood, Harford County (24-025-1001)	1.0	1.0	2.0	1.3
3560 Aldino Road, Harford County (24-025-9001)	1.0	0.0	1.0	0.7

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011.

A complete listing of the ozone exceedances for each monitoring site, as well as a summary of EPA's calculations can be found in the technical support document prepared for this proposed action. As shown in Table 1, the average number of expected exceedance days per year exceeded 1.0 at the Edgewood, Harford County monitoring site. Only monitors with three complete years of data are shown in Table 1. Since at least one monitor in the Baltimore area failed to attain the 1-hour ozone NAAQS by November 15, 2005, this is sufficient to support the conclusion that the area failed to attain the 1-hour ozone standard by its applicable attainment date. Therefore, we propose to determine that the Baltimore area failed to attain the 1-hour ozone NAAQS by its applicable attainment date of November 15, 2005.

B. What is EPA's Proposed Determination of Whether the Baltimore Area is Currently Attaining the 1-Hour Ozone Standard?

During the entire period from 2006 through 2011, the same seven ozone monitoring stations in the Baltimore area were in operation. Table 2 lists, for each monitor, its AQS identification number, its location, and its "short name."

Table 2. Monitor Information Baltimore Area 2006-2011		
Monitor (AQS ID No.)	**Location**	**Short Name**
24-510-0054	Furley E.S. Recreational Center, 4633 Furley Avenue,	Furley

	Baltimore City	
24-003-0014	Davidsonville Recreation Center, 3801 Queen Anne Bridge Road, Anne Arundel County	Davidsonville
24-005-1007	Padonia Elementary School, 9834 Greenside Drive, Cockeysville, Baltimore County	Padonia
24-005-3001	600 Dorsey Avenue, Essex, Baltimore County	Essex
24-013-0001	1300 W. Old Liberty Road, Carroll County	South Carroll
24-025-1001	Edgewood Chemical Biological Center (APG), Waehli Road, Edgewood, Harford County	Edgewood
24-025-9001	3560 Aldino Road, Harford County	Aldino

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011 and Report Request ID 937336, Report Code AMP450, dated December 13, 2011.

Table 3 summarizes the 1-hour ozone data collected at these six ozone monitoring stations during the 2006 to 2010 period and included in AQS for the Baltimore area. These data are complete and have been quality- assured and recorded in AQS. Maryland uses the AQS as the permanent database to maintain its data and to quality- assure the data transfers and content for accuracy. We have used the established rounding conventions set forth in our guidance documents and regulations.

Table 3. Number and Average Number of Ozone Expected Exceedance Days per Year by Monitor in the Baltimore area 2006 to 2010

Monitor Information	**Annual Number of Expected Exceedance Days**					**Average Number of Expected Exceedance Days Per Year**		
Monitor – AQS ID No. & "Short Name"	**2006**	**2007**	**2008**	**2009**	**2010**	**2006-2008**	**2007-2009**	**2008-2010**
24-510-0054 – Furley	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

24-003-0014 – Davidsonville	0.0	1.0	0.0	0.0	0.0	0.3	0.3	0.0
24-005-1007 – Padonia	0.0	0.0	1.0	0.0	0.0	0.3	0.3	0.0
24-005-3001 – Essex	1.0	0.0	0.0	0.0	1.0	0.3	0.0	0.3
24-013-0001 – South Carroll	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
24-025-1001 – Edgewood	2.0	1.0	0.0	1.0	1.1	1.0	0.7	0.7
24-025-9001– Aldino	1.0	2.0	0.0	0.0	0.0	1.0	0.7	0.0

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011.

Table 4 summarizes the 1-hour ozone data collected at these six ozone monitoring stations during the 2009 to 2011 period and included in AQS for the Baltimore area. These data for 2009 and 2010 are complete and have been quality- assured and recorded in AQS. The data for 2011 are those entered in AQS as of December 13, 2011. Data for at least 90 percent of the 2011 monitoring season days has been entered into AQS but has not yet been certified by Maryland.[9] The data shows that only one monitor recorded an exceedance of the 1-hour ozone standard; the Edgewood site measured one exceedance of the 1-hour ozone standard during 2011. As of December 13, 2011, the 2011 data entered into AQS for the Edgewood site includes 209 days of valid data and also includes three days assumed less than the standard. Under the procedures discussed in Section IV of this document, the number of expected exceedances for the Edgewood site is only 1.0 for 2011.

Table 4. Number and Average Number of Ozone Expected Exceedance Days per Year by Monitor in the Baltimore area 2009 to 2011		
Monitor Information	**Annual Number of Expected Exceedance Days**	**Average Number of Expected Exceedance Days Per Year**

9 The deadline for certifying the 2011 data is May 1, 2012. See, 40 CFR 58.15.

Monitor – AQS ID No. & "Short Name"	2009	2010	2011	2009-2011
24-510-0054 – Furley	0.0	0.0	0.0	0.0
24-003-0014 – Davidsonville	0.0	0.0	0.0	0.0
24-005-1007 – Padonia	0.0	0.0	0.0	0.0
24-005-3001 – Essex	0.0	1.0	0.0	0.3
24-013-0001 – South Carroll	0.0	0.0	1.0	0.0
24-025-1001 – Edgewood	1.0	1.1	1.0	1.0
24-025-9001– Aldino	0.0	0.0	0.0	0.0

Source: EPA AQS Database, "Quicklook Criteria Parameters," Report Request ID 843146, Report Code AMP450, dated March 3, 2011, for the 2009 to 2010 data and Report Request ID 937336, Report Code AMP450, dated December 13, 2011, for the 2011 data.

As shown in Tables 3 and 4, no monitor in the Baltimore area had a value of the average number of expected exceedance days per year exceeding 1.0 in the 3-year period 2006-2008. Furthermore, no monitor in the Baltimore area has had a value of the average number of expected exceedance days per year exceeding 1.0 in any 3-year period after 2006-2008, that is, during the subsequent 3-year periods 2007-2009 and 2008-2010. Thus the data show that the Baltimore area attained the 1-hour ozone standard in 2008 and has continued to attain this standard through 2010 based upon the most recent complete, quality-assured and certified data. Preliminary data available for 2011 indicate that the area continues in attainment for the 1-hour ozone standard for the period 2009 through 2011.

Therefore, we propose to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS based on the most recent three years of complete, quality-assured and certified ozone monitoring data, 2008-2010. Preliminary data available for 2011 indicate that the area continues in attainment of the 1-hour ozone standard. If we finalize this determination the State of Maryland's obligation to submit contingency measures for failure to attain the 1-hour ozone standard would be suspended.

VI. Proposed Actions

In this notice of proposed rulemaking, pursuant to EPA's authority to ensure implementation of 1-hour ozone anti-backsliding requirements (CAA sections 301 and 181(b)(2)) EPA is proposing two separate, independent, and severable determinations.

A. Proposed Determination of 1-Hour Ozone Attainment by the Attainment Deadline of November 15, 2005

Pursuant to EPA's authority to ensure implementation of 1-hour ozone anti-backsliding requirements (CAA section 301 and section 181(b)(2)) and based upon EPA's review of complete, quality-assured and certified ozone monitoring data for the 3-year period 2003 to 2005, EPA is proposing to determine that the Baltimore severe 1-hour ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005.

B. Proposed Determination that the Baltimore Area is Currently Attaining the 1-Hour Ozone Attainment

Second, however, EPA is proposing to determine that the Baltimore area is currently attaining the 1-hour ozone NAAQS, based upon the most recent three years of complete, quality-assured and certified ambient air monitoring data (2008-2010). The preliminary data that is available for 2011 show that the area continues to attain the standard. Moreover, the Baltimore area has monitored attainment of the 1-hour ozone NAAQS since the 2006-2008 monitoring period. If this proposed determination is made final, the obligation for the State of Maryland to submit contingency measures related to attainment of the 1-hour ozone NAAQS in the Baltimore severe

1-hour ozone nonattainment area would be suspended. These proposed determinations regarding the 1-hour ozone standard, if finalized, would bear on the Baltimore area's obligations with respect to the 1-hour ozone anti-backsliding requirements for section 172(c)(9) contingency measures for failure to attain that standard, and sections 182(d)(3) and 185 major stationary source fee programs.

VII. Statutory and Executive Order Reviews

This action proposes to make determinations of attainment and nonattainment based on monitored air quality data and does not impose additional requirements beyond those imposed by statute or regulation. For that reason, these proposed actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

- In addition, these proposed actions regarding attainment of the 1-hour ozone NAAQS in the Baltimore area do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects:

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National Parks, Wilderness Areas.

Authority: 42 U.S.C. 7401 et seq.

January 24, 2012
Dated:

/s/
W. C. Early, Acting
Regional Administrator,
Region III.

[FR Doc. 2012-2222 Filed 01/31/2012 at 8:45 am; Publication Date: 02/01/2012]